Supreme Court, U. S.
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IN THE

Supreme Court of the United States

No. 77-272

PUGET SOUND TRUCK LINES, INC.,
Petitioner,

v.

THE UNITED STATES OF AMERICA
and
THE INTERSTATE COMMERCE COMMISSION,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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COMES NOW Puget Sound Truck Lines, Inc. (hereinafter "Puget Sound") and does hereby petition this Court to grant review on writ of certiorari.

OPINION BELOW

The opinion in question was delivered in the United States Court of Appeals for the Ninth Circuit: *Puget Sound Truck Lines, Inc. v. The United States of America and The Interstate Commerce Commission*, Civil No. 75-3776 (9th Cir., filed July 1, 1977). A copy is attached as Appendix G.

JURISDICTION

The grounds on which the jurisdiction of this Court is invoked are as follows:

(1) The Opinion of the United States Court of Appeals for the Ninth Circuit is dated July 1, 1977; and

(2) The statutory provisions conferring jurisdiction on this Court to review the judgment of the Court of Appeals are 28 U.S.C. § 2350(a) and 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED FOR REVIEW

The questions presented for review are:

(1) Whether the Interstate Commerce Commission (respondent herein and hereinafter the "Commission") can properly interpret an administrative regulation contrary to the literal language thereof, and in a manner which results in a decrease in safety, economy, efficiency and competition in common carrier transportation services without such interpretation amounting to a violation of the National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding § 1, contrary to the public interest, an abuse of discretion and being, therefore, unlawful and void; and

(2) Whether in determining the correctness of the Commission's action in interpreting an administrative regulation, a reviewing court is required to consider the Commission's enabling legislation and the declared policy of Congress governing the Commission's actions (as contained in the National Transportation Policy) *in addition to* the Commission's own interpretation of the administrative regulation and the policy underlying the adoption thereof.

STATUTE AND REGULATION INVOLVED

1. The National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding § 1 provides:

> *It is hereby declared to be the national transportation policy of the Congress* to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; *to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance* of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; — all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. *All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.* (Emphasis added.)

2. The Commission's Superhighway Rules, 49 C.F.R. § 1042.3, are set forth in full at Appendix A.

STATEMENT OF THE CASE

A. Statement of the Facts

Puget Sound is a Washington corporation which provides common carrier transportation services by motor vehicle. Puget Sound holds a Certificate of Public Convenience and Necessity issued by the Commission authorizing it to transport, among other things, general commodities between Portland, Oregon and the Canadian border at Blaine, Washington over a regular north-south route along Interstate Highway No. I-5, except for a 21-mile stretch thereof lying between Chehalis, Washington on the south and Olympia, Washington on the north. At these points, the route contained in Puget Sound's Certificate leaves Interstate Highway No. I-5 at Chehalis, Washington and makes

a circuitous 121-mile loop through South Bend and Aberdeen, Washington returning to Interstate Highway No. I-5 at Olympia, Washington, 21 miles north of Chehalis, Washington. Attached as Appendix I is a map depicting (in blue) the route specified in Puget Sound's Certificate.

Since 1971, Puget Sound has been conducting its regular route general freight operations between Portland, Oregon and points in Washington at and north of Olympia, Washington over Interstate Highway No. I-5, including the 21-mile portion of I-5 lying between Olympia and Chehalis, Washington. These operations have been conducted under the purview of the Commission's Superhighway Rules (49 C.F.R. 1042.3(a)(1)).[1] The superhighway route is depicted (in red) on Appendix I. The Commission disagreed with Puget Sound's interpretation of the rule and ordered Puget Sound to confine its operations to the circuitous route thereby denying it and the public of the benefits inherent in operations conducted over the superhighway route.

Attached as Appendix B is a pictorial description of the circuitous route between Chehalis and Olympia, Washington consisting of eight numbered photographs. Attached as Appendix C is a picture of a typical section of the direct

1. The specific rule at issue below permits a common carrier to depart from its authorized regular route and operate over a superhighway provided that the superhighway route extends in the same general direction as the authorized service route and is wholly within 25 airline miles of the carrier's authorized regular service route. Puget Sound contends that its operations between Olympia and Chehalis, Washington over Interstate Highway No. I-5 satisfy these requirements, i.e. both routes extend in the same general direction and all points of the 21-mile superhighway route necessarily lie within 25 miles of Puget Sound's authorized regular route.

The Court of Appeals concluded that Puget Sound's interpretation of this rule was "the more literal" (see Appendix G at p. 4, ll. 3-4). This Court has stated that the first reference of a reviewing court is to the literal meaning of the words employed. *See Flora v. United States*, 357 U.S. 63 (1958).

superhighway route currently utilized by Puget Sound between Chehalis and Olympia, Washington.

The following facts are not controverted. The Aberdeen-South Bend route (circuitous route) includes obsolete, narrow, lightly surfaced, winding roadways. Major portions of this route do not have shoulders and have curves so tight that two trucks travelling in opposite directions cannot pass at the same time. (See Appendix B, Photographs 1, 3, 4, 5, 6, 7 and 8.) It is hazardous to the public travelling upon and to the four small communities Puget Sound must travel directly through with its large, heavily loaded tractor-trailer equipment when utilizing the circuitous route.

By operating over the 21-mile stretch of Interstate Highway No. I-5 between Chehalis and Olympia, Washington, Puget Sound achieves a savings of 100 miles, two hours driving time and approximately 25 gallons of fuel per trip. Thus, operations over the direct highway route not only achieve conservation of fuel and time, but eliminate the inconvenience and dangers to the public inherent in conducting substantial motor carrier operations over an obsolete roadway not suited for today's large and heavy motor carrier equipment.

It has not been contended by the Commission that Puget Sound's use of the superhighway route has constituted a new competitive service destructive to any other existing service, contrary to the public interest. However, elimination of the direct operations of Puget Sound between Portland, Oregon and points in the State of Washington via the superhighway will result in reduction in competition among the existing carriers operating over this route.

B. Review of Proceedings

The Bureau of Enforcement of the Commission challenged Puget Sound's interpretation of the Superhighway Rules and commenced an investigative proceeding to determine the legality of its operations over the direct superhighway route. No penalties were sought and the Commission allowed Puget Sound to continue its operations over Interstate Highway No. I-5 between Chehalis and Olympia, Washington pending the Commission's final decision in the matter.

A hearing was conducted by the Commission in Seattle, Washington on October 1, 1973. No competing carriers intervened to oppose Puget Sound's use of the direct superhighway route. The matter was submitted to the Commission on stipulated facts, four exhibits, and the oral testimony of two witnesses for Puget Sound.

On April 5, 1974, the Administrative Law Judge served his initial decision, which concluded that Puget Sound's operations over the 21-mile portion of Interstate Highway No. I-5 between Olympia and Chehalis were legal and in the public interest (see Appendix D).

In response to exceptions filed by the Bureau of Enforcement of the Commission, the Commission overruled the Administrative Law Judge and directed Puget Sound to cease and desist operations over the involved portion of Interstate Highway No. I-5 (see Appendix E). This is the Order on appeal herein.

Following denial of a Petition for Reconsideration filed by Puget Sound, the Commission stayed the effective and compliance date of its Order pending judicial review there-

of (see Appendix F). Puget Sound filed a petition to review the Order of the Commission with the United States Court of Appeals for the Ninth Circuit on December 18, 1975. The basis for federal jurisdiction was 28 U.S.C. § 2344. The Court of Appeals requested and received oral argument on Puget Sound's petition. On July 1, 1977, the Court of Appeals issued and filed its opinion denying Puget Sound's petition for review (see Appendix G). An Order has been entered by the Court of Appeals staying the mandate of its judgment pending the filing, consideration and disposition by this Court of Puget Sound's petition for a writ of certiorari.

ARGUMENT IN SUPPORT OF ALLOWANCE OF THE WRIT

The grant of a writ of certiorari is appropriate in this case because the United States Court of Appeals for the Ninth Circuit has decided a federal question in a way in conflict with an applicable decision of this Court. Specifically, the Court of Appeals has (1) upheld an administrative agency's (the Commission's) interpretation and application of an administrative regulation (the Superhighway Rules) even though the consequences thereof are in direct violation of the National Transportation Policy and the public interest; and (2) reviewed the correctness of the Commission's action by examining only the Commission's own interpretation of its Superhighway Rules and the policy underlying the adoption thereof, to the exclusion of the Commission's enabling legislation and the declared policy of Congress governing the Commission's actions, as contained in the National Transportation Policy.

The National Transportation Policy states, in part, that

all provisions of the Interstate Commerce Act shall be "so administered as to . . . promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers;". The Superhighway Rules at issue in this case were adopted by the Commission pursuant to the authority contained in Sections 204(a) (1) and (6) and 208(a) of the Interstate Commerce Act (*i.e.*, 49 U.S.C. § 304(a) (1), 49 U.S.C. § 304(a)(6), and 49 U.S.C. § 308). These enabling statutes are contained in Chapter 8 of the Act. Thus, the Superhighway Rules are subject to and must be administered and enforced consistent with the National Transportation Policy declared by Congress; *i.e.* "to promote safe, adequate, economical and efficient service and foster sound economic conditions in transportation and among the several carriers." The Commission's Order in this case violates the above mandate of Congress in each and every respect.[2]

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2. The Court of Appeals correctly observed that: "According to testimony and photographic evidence presented to the administrative law judge, the circuitous route includes long stretches of very old and narrow roadway which is poorly suited to heavy truck traffic. The route passes through the main streets of four small communities, and lack of shoulders, sharp curves, and occasional heavy fog conditions add to the hazard. The roundabout journey takes roughly two hours longer and requires approximately 25 more gallons of fuel than the same trip along I-5." (See Appendix G at Footnote 1.) The Court of Appeals also concluded that "The effect of the Commission's holding seems likely to be a reduction in competition over the Portland-Seattle route . . .". (See Appendix G at p. 4, ll. 21-23.)

The Court of Appeals failed to properly weigh the relevance of competition in assessing the public interest (*See Bowman Transportation v. Arkansas-Best Freight System*, 419 U.S. 281 (1974), quoted most recently in *P.C. White Truck Line, Inc. v. I.C.C.*, 551 F.2d 1326 (D.C. Cir. March 1, 1977), and likewise failed to "measure" the correctness of the Commission's action in light of the policy of Congress to promote safe, economical and efficient service.

This Court ruled in *Schaffer Transportation Co. v. United States*, 351 U.S. 83 (1957) at 87-88 that:

> The National Transportation Policy, formulated by Congress, specifies in its terms that it is to govern the Commission in the administration and enforcement of all provisions of the Act, and *this Court has made it clear that this policy is the yardstick by which the correctness of the Commission's actions will be measured. Dixie Carriers, Inc. v. United States*, 351 U.S. 56; *Eastern-Cent. Motor Carriers Ass'n v. United States*, 321 U.S. 194; *McLean Trucking Co. v. United States*, 321 U.S. 67. Of course, the Commission possesses a "wide range of discretionary authority. . . ." *But that discretion must be exercised in conformity with the declared policies of the Congress.* (Emphasis added.)

The foregoing language from *Schaffer* was quoted with approval by the Court in *American Trucking v. A.T. & S.F.-R.R.*, 387 U.S. 397, 421 (1967).

Although it was brought to the court's attention, the Court of Appeals did not refer to the "National Transportation Policy" in its opinion and clearly failed to measure the correctness of the Commission's actions in light of the declared policy of Congress.

Instead, the Court commented upon the "Commission's" policy in administering the Superhighway Rules and "measured" the correctness of the Commission's Order herein solely in light thereof, without considering whether the actual consequences of the Commission's Order are consistent with the National Transportation Policy as required by *Schaffer, supra.*

The consequences of the Commission's Order herein are to confine a common carrier to an antiquated circuitous route and thereby reduce efficient competition without any finding or conclusion that such a result is required to pre-

serve an existing competitive balance. Accordingly, the effect of the Commission's Order violates not only the Commission's purpose for promulgating the Superhighway Rules, but violates the National Transportation Policy as well.

At a time in the economic life of this country when the public interest is crying out for the elimination of waste and inefficiency in the regulation of the trucking industry,[3] the Order of the Commission and the Opinion of the Court of Appeals constitute conspicuous examples of failures to consider the mandate of the National Transportation Policy as required by *Schaffer, supra*. The Commission has failed to act with a "discriminating awareness of the consequences of its action". *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156 (1962) The Court of Appeals failed to use the proper "yardstick" in measuring the correctness of the Commission's action.

The Commission's action constitutes an abuse of discretion, contrary to the public interest and not in accordance with law. It is respectfully requested that this Court exercise its sound judicial discretion and accept this case for review.

Respectfully submitted,

CLYDE H. MACIVER
DONALD K. FRANKLIN
Counsel for Petitioner

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3. See, for example, the article in *The Washington Post*, May 9, 1976, attached as Appendix H, concerning the case at issue.

APPENDIX A

§1042.3 Superhighway rules—motor common carriers of property.

(a) *Regular-route, general-commodity certificates—construction.* All certificates of public convenience and necessity authorizing the transportation of general commodities, with or without exceptions, over a regular service route or routes, issued by the Commission pursuant to the provisions of Part II of the Interstate Commerce Act, shall be construed as authorizing operations over superhighways as defined below (including highways connecting such superhighways with the carrier's authorized regular service route or routes) between the point of departure from and the point of return to the carrier's authorized regular service route or routes, provided that either (1) the superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route or routes) between the point of departure from and the point of return to the carrier's authorized regular service route or routes (i) extends in the same general direction as the authorized service route or routes, and (ii) is wholly within 25 airline miles of the carrier's authorized regular service route or routes, or (2) the distance over the superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route or routes) between the point of departure from and the point of return to the carrier's authorized regular service route or routes is not less than 85 percent of the distance between such points over the carrier's authorized regular service route or routes.

(b) *Intermediate point service.* Motor carriers conducting operations over superhighways under subparagraph (1) of paragraph (a) of this section, which are authorized to serve all intermediate points (without regard to nominal exceptions) on their underlying regular service route or routes, may serve intermediate points on and within 1 airline mile of the superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route or routes) in the same manner and subject to corresponding service limitations as described in the pertinent certificate or certificates of public convenience and necessity. Motor carriers conducting operations over superhighways under subparagraph (2) of paragraph (a) of this section shall not receive or deliver freight from or to any person at any point not otherwise specifically authorized to be served by them.

(c) *Superhighway defined.* Any limited-access highway with split-level grade crossings and access ramps, or completed portion thereof, including those highways which make up the National System of Interstate and Defense Highways, and any direct existing highway, not a limited-access highway, located immediately adjacent to a planned superhighway.

(d) *Specific circumstances.* If, upon filing of a petition by any interested person and a determination of the issues presented thereby, the Commission shall find that operations by any motor carrier under the provisions of paragraph (a) or (b) of this section have resulted, or are reasonably certain to result, in either destructive competition or in the provision of inadequate transportation service by the carrier at any authorized service point or points, an appropriate order may be entered requiring the said motor carrier either to discontinue such operations in whole or in part, or to conduct its operations in compliance with the terms, conditions, and limitations in its certificates in the manner described in the said order. Upon the establishment by the petitioner that a motor carrier's service at a point on its underlying service route has been discontinued or curtailed, the burden of showing that the discontinuance or curtailment is reasonable is upon the motor carrier engaged in operations under these rules.

APPENDIX B

Pictorial Presentation of
WASHINGTON STATE HIGHWAY NO. 6
Between Chehalis and Cosmopolis

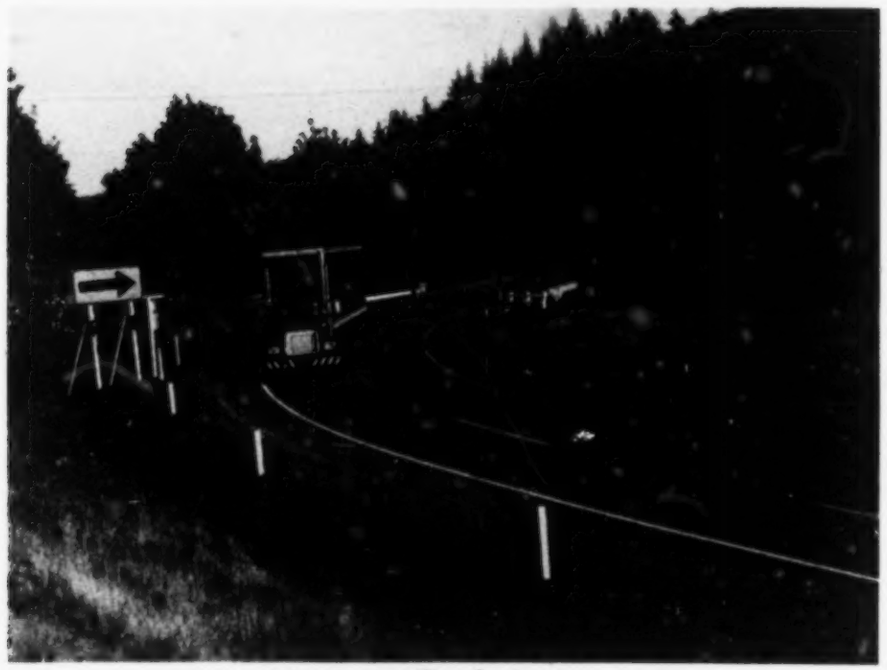
No. 1. Narrow—No Shoulders

No. 2. Residential Communities

No. 3. Very Low Overpasses

No. 4. Old Narrow Bridges

No. 5. Danger To Oncoming Traffic

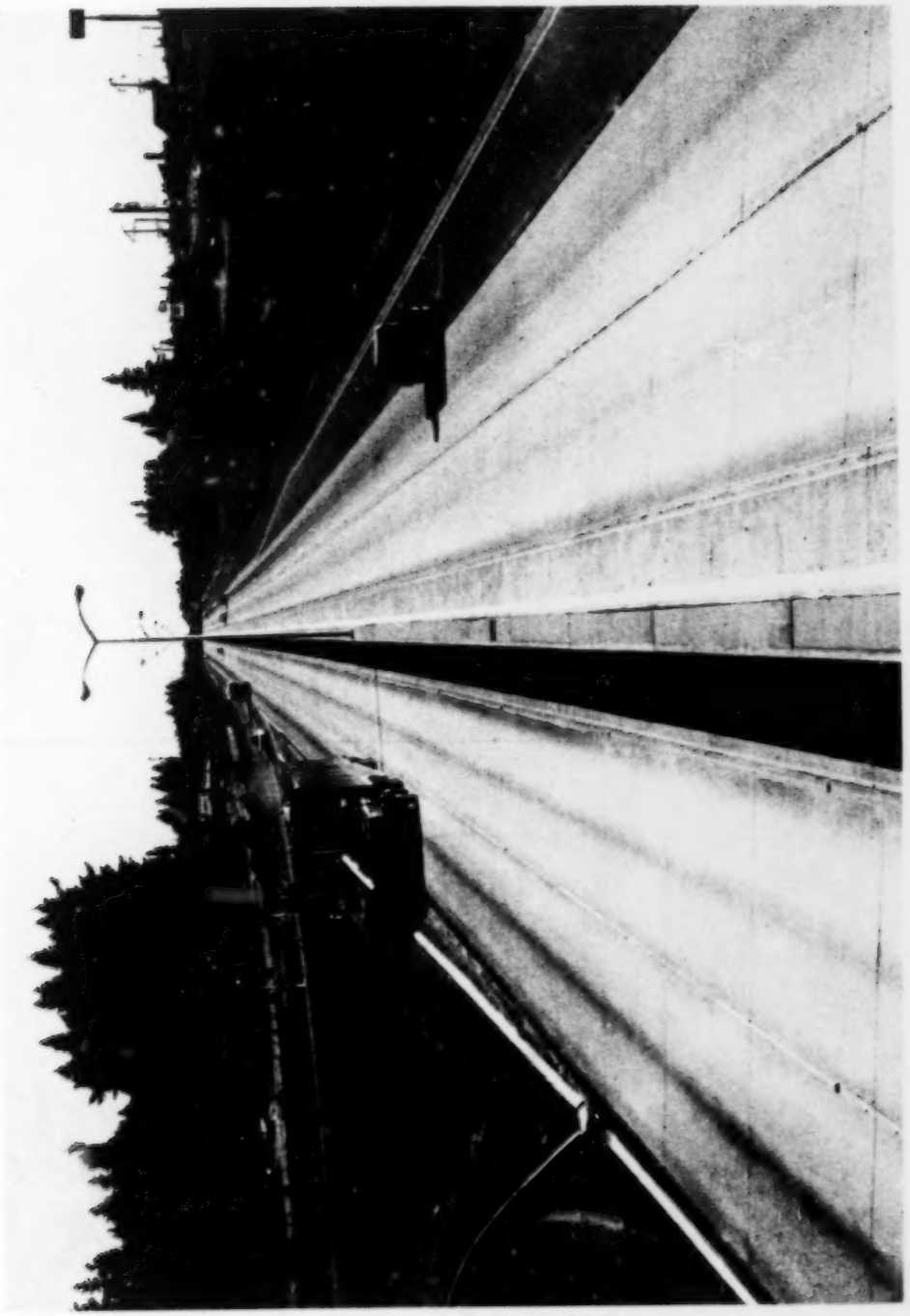


No. 6. Difficult Curves

No. 7. Mountain Passes

No. 8. Steep and Winding

APPENDIX C



Interstate Highway I-5
Direct Route

APPENDIX D

OH

INTERSTATE COMMERCE COMMISSION

INITIAL DECISION

No. MC-C-7866

PUGET SOUND TRUCK LINES, INC. -
INVESTIGATION AND REVOCATION OF CERTIFICATES

Respondent found not to be, or to have been, engaged in transportation not authorized by its certificates in violation of section 206(a) of the Interstate Commerce Act. Investigation discontinued.

Clyde H. MacIver for respondent.
Mitchell Haller for the Bureau of Enforcement, Interstate Commerce Commission.

By David S. Letts, Administrative Law Judge:

By order dated August 11, 1972, served September 1, 1972, the Commission, by its Vice Chairman, on its own motion, instituted an investigation under sections 204(c) and 212(a) of the Interstate Commerce Act, into and concerning the operations of Puget Sound Truck Lines, Inc., with a view to determining whether it has been and is performing operations in violation of section 206(a) of the Act, and to issuing such orders and taking such other and further action as the facts and circumstances may appear to warrant. Puget Sound Truck Lines, Inc. was named a respondent in the proceeding. The order stated that there is a reason to believe respondent has been and is performing operations in interstate or foreign commerce between Olympia, Wash., and Chehalis, Wash., over Superhighway U. S. Highway I-5, (I-5) in a manner not authorized by its certificate, in violation of section 206(a) and

the terms, conditions and limitations of its certificate.

The proceeding was referred to the Administrative Law Judge for hearing and an initial decision. Hearing was held October 1, 1973, in Seattle, Wash., at which respondent appeared and the Bureau of Enforcement (Bureau) appeared for the Commission. Briefs have been filed by the parties.

Respondent is a Washington corporation which was incorporated in July, 1926. It is a wholly-owned subsidiary of Puget Sound Freight Lines, Inc., which also owns Puget Sound Freight Lines, a motor carrier, holding authority from the Commission. Respondent's principle offices are located at Seattle. It operates approximately 162 trucks and 282 trailers in the conduct of its business.

As pertinent herein, respondent operates, pursuant to certificates issued by this Commission, as a motor common carrier of general commodities, with exceptions, from Seattle, Wash., over U. S. Highway 99 to Olympia, Wash., thence over U. S. Highway 410 to Cosmopolis, Wash., thence over U. S. Highway 101 and Washington Highway 6, to Chehalis, Wash., and thence over U. S. Highway 99 to Portland, Ore. Respondent has been and is regularly performing motor carrier service, including the transportation of aluminum cans from Kent, Wash., a point on U. S. Highway I-5 (U. S. 99) near Seattle, to Portland, Ore., utilizing U. S. I-5 between Olympia and Chehalis, a highway which constitutes a portion of the interstate system and is a superhighway. Specifically, it traverses I-5 the entire distance between Kent and Portland. A map of respondent's authorized routes and the superhighway route utilized by it are attached as an Appendix hereto.

From January 3 through February 3, 1972, respondent transported 11 truckload shipments of aluminum cans from Kent to Portland, over I-5, resulting in revenues of $170 for each shipment. The distance in miles from Kent to Portland over I-5 is approximately 165 miles. The distance from Kent to Portland by way of I-5 from Kent to Olympia, thence over U. S. Highway 410 to Cosmopolis, thence over U. S. Highway 101 and Washington Highway No. 6 to Chehalis, and thence over I-5 to Portland, is approximately 285 miles. The distance over the Superhighway I-5 between Olympia and Chehalis, the points of departure from and return to respondent's authorized service routes, is 21 miles. The distance between Olympia and Chehalis by way of Cosmopolis is approximately 120 miles. Portions of respondent's certificated routes between Olympia and Chehalis are more than 25 miles from the superhighway route between the same points.

On March 8, 1972, respondent was advised by the Commission's District Supervisor at Seattle, Wash., that in his opinion, the superhighway and deviation rules did not contemplate such deviation from respondent's regular routes, as to permit direct line service over I-5 between Kent and Portland. By letter of March 31, 1972, respondent's counsel expressed a contrary view. On August 11, 1972, the Commission instituted the present proceeding to determine the lawfulness of respondent's operations over the deviation route.

Continued operations over the superhighway route would have no effect upon the service offered by respondent at points on its certificated routes. It would continue to offer service at Aberdeen, and other points, as in the past to and from Seattle, Takoma [sic], Olympia, and Portland. No service would be offered at intermediate points on the superhighway between Olympia and Chehalis. If respondent is precluded from

using the superhighway route, it would continue to transport aluminum cans from Kent to Portland, over its certificated routes. The time in transit would be increased by about 2-1/2 hours and the mileage would be increased by about 100 miles. Respondent's regular route over Washington Highway 6 is described by one of its drivers as obsolete, narrow, two-lane, and winding, with sharp curves, low underpasses and narrow bridges. The highway is heavily traveled by log trucks as well as farmers' vehicles and slow-moving farm equipment. In some areas, the road extends through a mountainous area and there are no shoulders to accomodate [sic] disabled vehicles. Respondent's tractors average about 4 miles to each gallon of gasoline and thus consume about 30 gallons of fuel on each trip between Olympia and Chehalis over its regular routes.

CONTENTIONS OF THE PARTIES

On brief, the Bureau contends that respondent's utilization of the superhighway deviation route between Olympia and Chehalis may not be undertaken pursuant to the superhighway rules contained in 49 C.F.R. 1042.3; that the superhighway rules governing motor common carriers of property are only applicable to regular route general commodity certificates; and that evidence as to safety and economy of operations are not to be considered in applying the superhighway rules.

The Bureau argues that a substantial portion of respondent's involved certificated route is more than 25 miles distant from the superhighway and thus, Highway I-5 cannot lawfully be used by respondent. Further, it argues that the superhighway route involved is approximately 17% of the carrier's involved certificated route and thus, does not qualify under the 85% rule set forth in the superhighway rules. Moreover, the Bureau argues that respondent's operating rights are regular route authority between Olympia and

Aberdeen; regular route authority between South Bend, Wash., and Portland, Ore.; but that it must utilize an irregular route authority to bridge the gap between South Bend and Aberdeen; and that it may serve between Kent, Wash., and Portland, Ore. only because of its authority to tack portions of its regular and irregular route authorities. It concludes that the totality of respondent's authority is not regular route in nature and thus, it may not utilize the superhighway rules. Finally, the Bureau argues that a fair reading of 49 C.F.R. 1042.3, et seq., together with all of the cases thereunder, gives no standing or efficacy to safety-economy criteria in the event the operations do not conform to the requirements of the rules, and should not be considered in reaching a decision. The Bureau concludes that respondent is not authorized to perform operations between Olympia and Chehalis over U. S. Highway I-5 and should be ordered and required to cease and desist from performing such operations.

Respondent contends that its rights must be determined under the "25-mile" provision of the rule and that it does not come within the "85%" portion of the rule; that the "25-mile" rule requires only that every point on the superhighway route be within 25 airline miles of some point on the authorized service route; that the language of the rule is clear and unambiguous and must be applied by the Commission on the basis of what has been written; that respondent falls within the 25-mile provision of the rule in that the superhighway extends in the same general direction as the authorized service route or routes; that it holds general freight, regular route authority, except for an 18-mile portion between South Bend and Aberdeen which is included in a general commodity, 20-mile radial route authority with a base at South Bend and there is only one highway, U. S. Highway 101, which connects South Bend and Aberdeen; that the Commission has authorized the

tacking of respondent's two general commodity regular routes with its radial route authority thereby authorizing it to operate over a regular route between South Bend and Aberdeen on through service between points on its regular routes to the north and to the south; and that, accordingly, respondent's operations are within the scope of the existing language of the Commission's superhighway rules.

Respondent argues that operations over the superhighway allow it to avoid a burdensome circuity over its certificated routes, which consumes unnecessary fuel and time and, in view of the condition of the roadway involved, unnecessarily endangers and inconveniences the traveling public. Further, it argues that the superhighway route does not constitute a new transportation service or a materially different service and results in a more efficient and safe operation. Additionally, respondent does not intend to reduce the service it presently provides to the points on its regular routes. Intermediate points on the superhighway route are not offered service. It concludes that operations over the superhighway, I-5, between Olympia and Chehalis, are in compliance with the Commission's rules as written, and are consistent with the public interest and the purpose for which the rules were promulgated.

DISCUSSION AND CONCLUSIONS

The pertinent provisions of the superhighway rules provide as follows:

> Section 1042.3 Superhighway rules - motor common carriers of property.
>
> (a) Regular-route, general-commodity certificates - construction. All certificates of public convenience and necessity authorizing the transportation of general commodities, with or without exceptions,

> over a regular service route or routes, issued by the Commission pursuant to the provisions of part II of the Interstate Commerce Act, shall be construed as authorizing operations over superhighways as defined below (including highways connecting such superhighways with the carrier's authorized regular service route or routes) between the point of departure from and the point of return to the carrier's authorized regular service route or routes, provided that <u>either</u> (1) the superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route or routes) between the point of departure from and the point of return to the carrier's authorized regular service route or routes (i) extends in the same general direction as the authorized service route or routes, and (ii) is wholly within 25 airline miles of the carrier's authorized regular service route or routes, <u>or</u> (2) the distance over the superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route or routes) between the point of departure from and the point of return to the carrier's authorized regular service route or routes is not less than 85 percent of the distance between such points over the carrier's authorized regular service route or routes. (underscoring added)

It is well established that rules and regulations should be interpreted according to the natural or usual meaning of the written words unless the words are ambiguous and the meaning uncertain. In <u>Petition for Interpretation of Certain Provisions of the Property Motor Carrier Superhighway Rules</u>, 117 M.C.C. 119, 147, the Commission said:

This Commission determined, in promulgating the Superhighway Rules--Motor Common Carriers of Property, 49 CFR 1042.3, that certificated regular-route motor common carriers of general commodities, with or without exceptions, should be allowed to operate over superhighway routes between points on their authorized regular service routes, *** pursuant to a general rule of construction applicable to their outstanding certificated regular service route authority and predicated upon a "corridor" concept. *****

The general rule of construction (section 1042.3(a)) enables a certificated regular-route motor common carrier of general commodities, with or without exceptions, to operate over superhighways (including highways connecting such superhighways with the carrier's authorized regular service route) between the point of departure from and the point of return to the carrier's authorized regular service route, provided that the operation is conducted within the guidelines specified either in the "25-mile" rule (section 1042.3(a)(1)) or the "85-percent" provision (section 1042.3(a)(2)).

It should be noted that the rules as written allow qualified carriers to operate over superhighways "between points on their authorized regular service routes". The plain meaning of this language is that a deviation superhighway route may be utilized as an alternate in connection with respondent's regular route north of Olympia and its regular route south of Chehalis and such use would seem to fall within the provisions of the applicable rule. Respondent's regular routes and the superhighway route extend in the same general direction as required by the rule.

It should also be noted that the language of the rule is expressed in the alternative and permits a carrier to utilize the superhighway route either over a route which is wholly within 25 airline miles of the carrier's authorized regular service route or routes, or under the 85% provision of the rule. Respondent operates over a superhighway route 21 miles in length between Olympia and Chehalis, all points of which are within 25 airline miles of the point of departure from and the point of return to respondent's regular service routes. Respondent need not comply with the alternative 85% provision of the rule.

Cases cited by the Bureau, to the effect that there must be no point on the underlying authorized service route which is more than 25 miles distant from the point to which it is closest on the superhighway route, are proceedings in which that precise issue was not decisive in the case. Thus, the material quoted by the Bureau is mere dicta and not controlling in this proceeding.

In considering the basic reasons for deviation rules, the Commission said in Motor Service on Interstate Highways-Passengers, 110 M.C.C. 514, 533:

> The advent of the Interstate Highway System represents a totally new concept, wholly unlike any situation which we have thus far experienced in the regulations of motor carriers. This new situation and the myriad of problems and issues engendered by it demand new solutions consonant with the public interest and the national transportation policy. Considering *** the present and potential savings in operating costs, time costs, and accident costs that will be enjoyed by commercial users of the Interstate System, we are persuaded

> that, *** the benefits to the public of the proposed rule will far outweight [sic] any adverse effect on the operations of existing carriers that may ensue from any increased competition, ***.

Interpreting the superhighway rules in light of the Commission's basic reasons for establishing the rules, it is concluded that respondent's utilization of U. S. Highway I-5 between Olympia and Chehalis is in compliance with applicable rules. No competing carrier has intervened in opposition to respondent's use of the superhighway route.

The evidence shows that, particularly in view of the existing tractor fuel shortage, the use by respondent of a shorter and safer operating route would have a beneficial effect upon the quality of the human environment in the areas involved.

FINDINGS AND ORDER

The Administrative Law Judge finds, That respondent has not been shown to be, or to have been, performing operations in interstate or foreign commerce, between Olympia, Wash., and Chehalis, Wash., over superhighway U. S. Highway I-5, in a manner not authorized by its certificates, in violation of Section 206(a) and the terms, conditions, and limitations of its certificates, and that an order should be entered discontinuing the present investigation.

The Administrative Law Judge further finds, That this decision is not a major Federal action affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

Premises considered, it is the ORDER of the Administrative Law Judge that:

This proceeding be, and it is hereby, discontinued.

And it is further ordered, That unless stayed by the Commission on its own motion, or by the timely filing of exceptions pursuant to the Commission's General Rules of Practice, this order shall become effective as the order of the Commission 30 days from the date of service hereof.

Dated at Washington, D. C., this 18th day of March, 1974.

/s/ David S. Letts

By the Commission, David S. Letts, Administrative Law Judge.

ROBERT L. OSWALD,

(SEAL) Secretary.

APPENDIX E

Served February 11, 1975

M-12624

INTERSTATE COMMERCE COMMISSION

No. MC-C-7866

PUGET SOUND TRUCK LINES, INC.—INVESTIGATION AND REVOCATION OF CERTIFICATES

No. MC-C-7866

PUGET SOUND TRUCK LINES, INC.—INVESTIGATION AND REVOCATION OF CERTIFICATES

Decided January 24, 1975

Respondent found to be engaged in the unlawful performance of certain described operations between Olympia and Chehalis, Wash., which operations are not permitted under this Commission's *Superhighway Rules—Motor Common Carriers of Property*, 49 CFR 1042.3, and for the conduct of which operations respondent does not hold the requisite authority. Cease and desist order entered.

Clyde H. MacIver for respondent.

Mitchell Haller, Robert S. Griswold, Jr., and *Robert L. Scavron* for the Bureau of Enforcement of the Interstate Commerce Commission.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS MURPHY, GRESHAM, AND MACFARLAND

MURPHY, *Commissioner:*

Exceptions to the initial decision and recommended order of the Administrative Law Judge were filed by this Commission's Bureau of Enforcement, and respondent replied. Our conclusions differ from those recommended.

On the stated grounds that there is reason to believe that Puget Sound Truck Lines, Inc., of Seattle, Wash. (respondent), has been and is performing operations, in interstate or foreign commerce, between Olympia and Chehalis, Wash., over Interstate Highway 5 (a superhighway), in a manner not authorized by its certificates (No. MC-85255 and subnumbers thereunder), in violation of section 206(a) of the Interstate Commerce Act and the terms, conditions, and limitations of said certificates, the instant investigation was instituted by order entered August 11, 1972, under sections 204(c) and 212(a) of the said act, into and concerning the operations and practices of respondent, with a view to determining whether such

violations have occurred, and to issuing such orders and taking such other and further action as the facts and circumstances may appear to warrant. The instituting order further provided that (1) in the event it is found that respondent has willfully violated the statute or the terms and conditions of its certificates, an order may be entered suspending, in whole or in part, the certificates issued to it, and (2) if it is found that respondent, whether willfully or otherwise, has violated or is violating the statute or terms and conditions of its certificates, an order may be entered requiring respondent to comply therewith and thereafter to maintain such compliance, and upon the willful failure of said respondent to comply with such order, its certificates may be revoked, in whole or in part. The order also directed the Bureau of Enforcement to participate in this proceeding.

Hearing in the proceeding was held on October 1, 1973. Briefs were filed by the Bureau of Enforcement and by respondent.

RESPONDENT'S SUPERHIGHWAY OPERATIONS IN ISSUE IN THIS PROCEEDING

Respondent holds pertinent authority to operate as a regular- and irregular-route motor common carrier of general commodities (with certain exceptions), but does not hold specific operating authority to conduct the regular-route general freight operations in issue in this proceeding. Rather, it contends that it may perform the questioned operations pursuant to the "25-mile" [section 1042.3(a)(1)] provision of this Commission's *Superhighway Rules—Motor Common Carriers of Property*, 49 CFR 1042.3.[1] Except as otherwise specified, all points mentioned in this report are in the State of Washington.

Pursuant to its interpretation of the "25-mile" provision [section 1042.3(a)(1)] of the Superhighway Rules respondent operates between Olympia and Chehalis, as points of departure from and points of return to the underlying authorized service route, over Interstate Highway 5 (a superhighway).[2] Respondent holds the following general-freight, service-route authority which it combines or tacks to operate between Olympia and Chehalis: (a) regular-route authority between Olympia and Cosmopolis, over U.S. Highway

[1] These rules are set forth in full in appendix A to this report.

[2] Interstate Highway 5 is a superhighway as that term is defined in section 1042.3(c) of the Superhighway Rules. Also, respondent does not, nor does it contend that it can, serve intermediate points on Interstate Highway 5 between Olympia and Chehalis pursuant to the "intermediate-point service" provision [section 1042.3(b)] of the Superhighway Rules.

410,[3] (b) irregular-route authority between points within 20 miles of South Bend,[4] and (c) regular-route authority between Raymond and Chehalis, over Washington Highway 6.[5] Thus, in operating between Olympia and Chehalis utilizing its underlying certificated authority, respondent traverses the following highways: from Olympia over U.S. Highway 410 to junction U.S. Highway 101, thence over U.S. Highway 101 to junction Washington Highway 6, and thence over Washington Highway 6 to Chehalis and return over the same route.[6] Respondent relies on this operation as its pertinent certificated operation underlying the above-described superhighway operations between Olympia and Chehalis which are in question in this proceeding.

THE ADMINISTRATIVE LAW JUDGE'S INITIAL DECISION

In his initial decision the Administrative Law Judge concluded that the questioned superhighway operations of respondent between Olympia and Chehalis extend "in the same general direction as" the underlying specifically authorized operations which respondent conducts; that respondent operates over a superhighway route all points on which are within 25 airline miles of the point of departure from and the point of return to respondent's underlying regular service routes; that, therefore, as respondent contends, the questioned superhighway operations which respondent performs between Olympia and Chehalis, over Interstate Highway 5, are within the permissible ambit of the 25-mile provision [i.e., section 1042.3(a)(1)] of the Superhighway Rules; and that, therefore, the instant investigation proceeding should be discontinued.

THE EXCEPTIONS AND REPLY

In its exceptions to the Administrative Law Judge's initial decision, the Bureau contends (1) that respondent's certificated

[3]Cosmopolis is served as an off-route point in connection with respondent's certificated regular service route which extends between Olympia and Aberdeen, over U.S. Highway 410.

[4]This irregular, nonradial operating authority, as here pertinent, enables respondent to provide service between Cosmopolis and Raymond, both of which are within 20 miles of South Bend.

[5]Operations between Raymond and Chehalis are conducted under respondent's certificated regular service route authority to transport general freight, with exceptions, between South Bend and Chehalis, over Washington Highway 6, serving all intermediate points between South Bend and Pe Ell (including Pe Ell), Raymond being such an intermediate point.

[6]The sketch map in appendix B to this report depicts the routes and operations of respondent which are involved in this proceeding. Current maps indicate that the highway referred to in respondent's authority as U.S. Highway 410 between Aberdeen and Olympia has been redesignated in three parts: U.S. Highway 101, State Highway 8, and U.S. Highway 12. For the purposes of this proceeding, however, it shall be referred to as U.S. Highway 410

operating rights which authorize service between Cosmopolis and Raymond are irregular route in nature, that the Superhighway Rules apply only where the underlying certificated authority between the point of departure from and the point of return to the carrier's authorized service route is entirely regular-route in nature, and that, therefore, the questioned superhighway operations are not within the ambit of the Superhighway Rules, (2) that, moreover, respondent's questioned superhighway operations fail to meet the criteria of the "25-mile" rule, inasmuch as not every point on the underlying authorized service route is within 25 airline miles of the involved superhighway route, and (3) that, contrary to the Administrative Law Judge's conclusion, an order should be entered requiring respondent to cease and desist performing the questioned superhighway operations.

Respondent has replied to each of the Bureau's contentions, and generally submits that the Bureau's arguments are without merit; that the findings and conclusions of the Administrative Law Judge are correct and should be affirmed; and that the investigation should be discontinued.

The evidence, the Administrative Law Judge's recommendation, the exceptions, and the reply have been considered. We find the Administrative Law Judge's statement of facts to be correct in most respects; and, as modified and supplemented herein, we adopt that statement as our own. The facts have been set forth to the extent necessary for clarity of discussion and disposition of the issues to be resolved.

DISCUSSION AND CONCLUSIONS

The Superhighway Rules—Motor Common Carriers of Property, 49 CFR 1042.3,[7] enable a certificated regular-route motor common carrier of general commodities, with or without exceptions, to operate over superhighways (including highways connecting such superhighways with the carrier's authorized regular service route) between the point of departure from and the point of return to the carrier's authorized regular service route, provided that the operation is conducted within the guidelines specified *either* in the "25-mile" rule [section 1042.3(a)(1)] *or* the "85-percent" provision [section 1042.3(a)(2)]. Briefly, the "25-mile" rule requires that the superhighway route (including highways connecting such

[7]These rules, which were promulgated in *Motor Service on Interstate Highways—Passengers*, 110 M.C.C. 514 (1969), have been extensively clarified and interpreted by the entire Commission in *Property Motor Carrier Superhighway Rules*, 117 M.C.C. 119 (1972).

superhighway route with the carrier's authorized regular service route) between the point of departure from and the point of return to the carrier's authorized regular service route must (1) extend in the same general direction as the carrier's authorized regular service route, *and* (2) be wholly within 25 airline miles of the carrier's authorized regular service route. The "85-percent" provision requires that the distance over the superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route) between the point of departure from and the point of return to the carrier's authorized regular service route must not be less than 85 percent of the distance between such points over the carrier's authorized service route. The "intermediate-point service" provision [section 1042.3(b)] of the Superhighway Rules allows a carrier conducting superhighway operations under the above-described "25-mile" rule, which carrier is authorized to serve all intermediate points (without regard to nominal exceptions) on its underlying certificated regular service route between the point of departure from and the point of return to the said service route, to serve intermediate points on and within 1 airline mile of the said superhighway route (and the highways connecting the said superhighway route with the carrier's authorized regular service route) in the same manner and subject to corresponding service limitations as described in the pertinent certificate or certificates of public convenience and necessity.

In the instant proceeding, as previously noted, respondent is conducting operations, purportedly under the "25-mile" provision of the Superhighway Rules between Olympia and Chehalis, over Interstate Highway 5. We must here determine whether the questioned operations may lawfully be performed under the cited regulations.

The Superhighway Rules were designed to enable certificated *regular-route* motor common carriers of property to use the Interstate Highway System and other superhighways, without the necessity of obtaining specific operating authority for such utilization under a case-by-case application procedure, pursuant to a general rule of construction applicable to their outstanding certificated regular service route authority and predicated upon a "corridor" concept. The said rule of construction [section 1042.3(a)] specifically applies only to certificates of public convenience and necessity authorizing the transportation of general freight, with or without exceptions, over *regular service routes.* This concept of underlying certificated service routes between "the point of departure and the point of return" does not include routes which are constructed by the combining or tacking of irregular-route with

regular-route operating rights. The certificated operations underlying operations conducted under the Superhighway Rules must be entirely regular-route in nature. Although respondent may invariably utilize U.S. Highway 101 in moving between Cosmopolis and Raymond, the authority underlying this portion of respondent's certificated operations between Olympia and Chehalis, the said "points of departure and return," is, nevertheless, irregular-route in nature. Therefore, inasmuch as respondent does not hold the requisite underlying regular service route authority between Olympia and Chehalis, we conclude that its questioned operations between said points are not within the permissible ambit of the Superhighway Rules.[8]

Moreover, even if respondent's underlying authorized operations were entirely regular-route in nature, its questioned operations between Olympia and Chehalis, over Interstate Highway 5, would nevertheless not fall within the permissible scope of *either* the "25-mile" rule [section 1042.3(a)(1)] *or* the "85-percent" provision [section 1042.3(a)(2)] of the Superhighway Rules for the reasons indicated below.

In this context, it must be noted initially that under the "25-mile" rule the superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route) must (1) extend in the same general direction as the authorized underlying regular service route and (2) be wholly within 25 airline miles of the carrier's authorized underlying regular service route. The requirement that the superhighway route "extend in the same general direction as" the underlying authorized regular service route between the point of departure from and the point of return to the said service route has been construed as meaning that the superhighway route (including the connecting highways) must "generally parallel" the underlying authorized regular service route between the said point of departure and point of return. See *Property Motor Carrier Superhighway Rules, supra,* at 149; and *Great Lakes Exp.*

[8]Related to this matter is the salient fact that, as previously described, respondent is presently operating between Olympia and Chehalis by tacking or combining three separate operating authorities: i.e., two regular-route authorities (one between Olympia and Cosmopolis, the other between Raymond and Chehalis) and an irregular-route authority (between Cosmopolis and Raymond), which latter authority serves as a "bridge" between the two said regular-route rights. It is noted that in thus utilizing the "bridging" irregular-route operating right, respondent, in accordance with the inherent limitations of such authority, must maintain the irregular nature of the service performed under the irregular-route authority. Maintaining the irregular nature of the service conducted under said irregular-route authority in the described circumstances may be difficult, perhaps impossible, compare *Falwell Fast Frt., Inc.—Pur.—Draper, and Evans Line, Inc.,* 40 M.C.C. 439 (1946), and respondent is hereby cautioned to carefully scrutinize its operations in this regard.

Co., et al. v. *National Transit,* 117 M.C.C. 735, 742 (1973). The superhighway route here at issue clearly does not, within the meaning of the Superhighway Rules, extend in the same general direction as or "generally parallel" respondent's certificated operations between Olympia and Chehalis which purportedly underly the said questioned superhighway operations. The requirement that the superhighway route (including the highways connecting such superhighway route with the carrier's authorized underlying regular service route) between the point of departure from and the point of return to the carrier's authorized underlying regular service route be "wholly within 25 airline miles of the authorized regular service route" has been consistently interpreted as requiring (1) that there must be *no point* on the said superhighway route (including the connecting highways) between the point of departure from and the point of return to the carrier's authorized underlying regular service route which is more than 25 airline miles distant from the point to which it is closest on the said authorized route, and, correspondingly, (2) that there must be *no point* on the said authorized underlying service route which is more than 25 airline miles distant from the point to which it is closest on the said superhighway route (including the connecting highways) between the point of departure from and the point of return to the said authorized underlying regular service route. In short, *every* point on the superhighway route must be within 25 airline miles of the authorized underlying regular service route, and, at the same time, *every* point on the authorized underlying regular service route must be within 25 airline miles of the superhighway route. See *Commercial Motor Frt., Inc., Ext.—Crawfordsville, Ind.,* 114 M.C.C. 500, 519-520 (1971); and *Property Motor Carrier Superhighway Rules, supra,* at 150. Numerous points on the route which respondent submits as its underlying authorized service route are unarguably substantially more than 25 airline miles distant from the respective points to which they are closest on the involved superhighway route.* Accordingly, it is apparent that the operation here at issue may not be performed under the "25-mile" rule.

The "85-percent" provision specifies that the distance over the superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route) between the point of departure from and the point of return to the

*For example, Cosmopolis and Raymond are, respectively, approximately 37 and 34 miles distant from the points to which they are closest on the involved superhighway route.

Co., et al. v. *National Transit,* 117 M.C.C. 735, 742 (1973). The superhighway route here at issue clearly does not, within the meaning of the Superhighway Rules, extend in the same general direction as or "generally parallel" respondent's certificated operations between Olympia and Chehalis which purportedly underly the said questioned superhighway operations. The requirement that the superhighway route (including the highways connecting such superhighway route with the carrier's authorized underlying regular service route) between the point of departure from and the point of return to the carrier's authorized underlying regular service route be "wholly within 25 airline miles of the authorized regular service route" has been consistently interpreted as requiring (1) that there must be *no point* on the said superhighway route (including the connecting highways) between the point of departure from and the point of return to the carrier's authorized underlying regular service route which is more than 25 airline miles distant from the point to which it is closest on the said authorized route, and, correspondingly, (2) that there must be *no point* on the said authorized underlying service route which is more than 25 airline miles distant from the point to which it is closest on the said superhighway route (including the connecting highways) between the point of departure from and the point of return to the said authorized underlying regular service route. In short, *every* point on the superhighway route must be within 25 airline miles of the authorized underlying regular service route, and, at the same time, *every* point on the authorized underlying regular service route must be within 25 airline miles of the superhighway route. See *Commercial Motor Frt., Inc., Ext.—Crawfordsville, Ind.,* 114 M.C.C. 500, 519-520 (1971); and *Property Motor Carrier Superhighway Rules, supra,* at 150. Numerous points on the route which respondent submits as its underlying authorized service route are unarguably substantially more than 25 airline miles distant from the respective points to which they are closest on the involved superhighway route.* Accordingly, it is apparent that the operation here at issue may not be performed under the "25-mile" rule.

The "85-percent" provision specifies that the distance over the superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route) between the point of departure from and the point of return to the

*For example, Cosmopolis and Raymond are, respectively, approximately 37 and 34 miles distant from the points to which they are closest on the involved superhighway route.

carrier's authorized regular service route must be not less than 85 percent of the distance between such points over the carrier's authorized underlying regular service route. In this respect, we note that the distance between Olympia and Chehalis, over Interstate Highway 5, is only 17.5 percent of the distance between these points over the route which respondent submits as its underlying authorized service route.[10] Inasmuch as the distance over the superhighway route between the point of departure from and the point of return to respondent's (purported) authorized underlying service route is less than 85 percent of the distance between such points over respondent's (purported) authorized underlying service route, such superhighway operation does not comport with the guidelines of and may not be performed under the "85-percent" provision.

In these premises, it is clear that the Olympia-Chehalis operation here at issue is not within the scope of and may not be conducted under the Superhighway Rules.

Inasmuch as respondent is performing operations, as detailed above, which are not permitted under the Superhighway Rules and for the conduct of which it does not hold the requisite certificated authority, respondent is in violation of sections 203(c) and 206(a)(1) of the Interstate Commerce Act, and should be required to cease and desist from the performance of such unlawful transportation. The respondent is hereby specifically reminded of its obligation, as directed in the order entered herein, to comply with the provisions of rule 99 of the Commission's General Rules of Practice (49 CFR 1100.99) describing the manner of its compliance with such order requiring it to cease and desist from the performance of the operations found in the report to be unlawful.

FINDINGS

We find that the respondent is engaged in the performance of certain motor common carrier operations, in interstate or foreign commerce, as described above, between Olympia and Chehalis, Wash., over Interstate Highway 5; that these operations are not permitted under this Commission's *Superhighway Rules—Motor Common Carriers of Property*, 49 CFR 1042.3, and that respondent does not hold the requisite certificated authority to conduct these operations; that such operations are in violation of sections 203(c) and 206(a)(1)

[10]The distance between Olympia and Chehalis, over Interstate Highway 5, is 21 miles. The distance between these two points over respondent's (purported) underlying authorized service route is 120 miles.

of the Interstate Commerce Act; that an order should be entered requiring respondent to cease and desist forthwith and thereafter to refrain and abstain from such unlawful operations unless and until appropriate authority therefor is obtained; and that this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

An appropriate order will be entered.

APPENDIX A

§1042.3 Superhighway rules—motor common carriers of property.

(a) *Regular-route, general-commodity certificates—construction.* All certificates of public convenience and necessity authorizing the transportation of general commodities, with or without exceptions, over a regular service route or routes, issued by the Commission pursuant to the provisions of part II of the Interstate Commerce Act, shall be construed as authorizing operations over superhighways as defined below (including highways connecting such superhighways with the carrier's authorized regular service route or routes) between the point of departure from and the point of return to the carrier's authorized regular service route or routes, provided that either (1) the superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service or routes) between the point of departure from and the point of return to the carrier's authorized regular service route or routes (i) extends in the same general direction as the authorized service route or routes, and (ii) is wholly within 25 airline miles of the carrier's authorized regular service route or routes, or (2) the distance over the superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route or routes) between the point of departure from and the point of return to the carrier's authorized regular service route or routes is not less than 85 percent of the distance between such points over the carrier's authorized regular service route or routes.

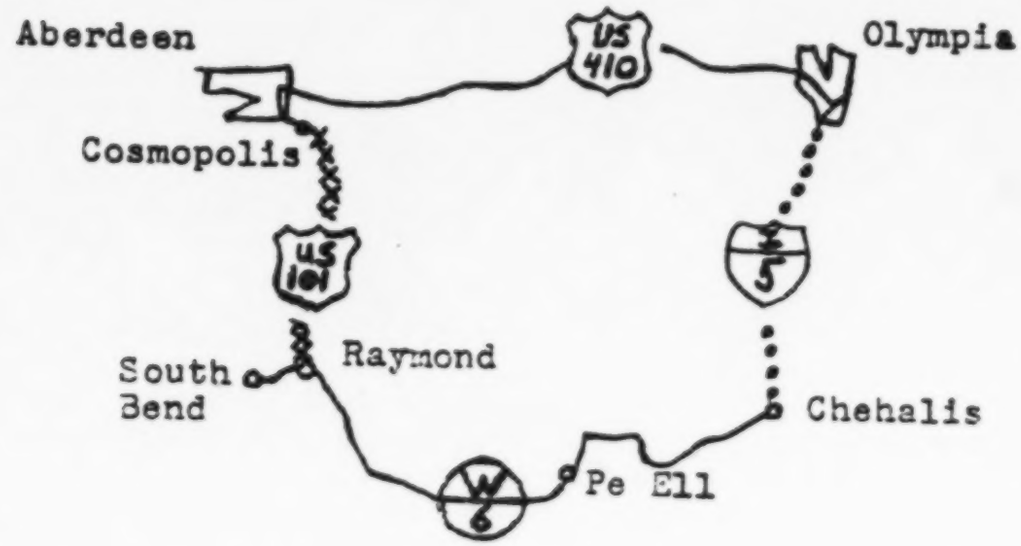
(b) *Intermediate point service.* Motor carriers conducting operations over superhighways under subparagraph (1) of paragraph (a) of this section, which are authorized to serve all intermediate points (without regard to nominal exceptions) on their underlying regular service route or routes, may serve intermediate points on and within 1 airline mile of the superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route or routes) in the same manner and subject to corresponding service limitations as described in the pertinent certificate or certificates of public convenience and necessity. Motor carriers conducting operations over superhighways under subparagraph (2) of paragraph (a) of this section shall not receive or deliver freight from or to any person at any point not otherwise specifically authorized to be served by them.

(c) *Superhighway defined.* Any limited-access highway with split-level grade crossings and access ramps, or completed portion thereof, including those highways which make up the National System of Interstate and Defense Highways, and any direct existing highway, not a limited-access highway, located immediately adjacent to a planned superhighway.

(d) *Specific circumstances.* If, upon filing of a petition by any interested person and a determination of the issues presented thereby, the Commission shall find that operations by any motor carrier under the provisions of paragraph (a) or (b) of this section have resulted, or are reasonably certain to result, in either destructive competition or in the provision of inadequate transportation service by the carrier at any authorized service point or points, an appropriate order may be entered requiring the said motor carrier either to discontinue such operations in whole or in part, or to conduct its operations in compliance with the terms, conditions, and limitations in its certificates in the manner described in the said order. Upon the establishment by the petitioner that a motor carrier's service at a point on its underlying service route has been discontinued or curtailed, the burden of showing that the discontinuance or curtailment is reasonable is upon the motor carrier engaged in operations under these rules.

APPENDIX B

Map of routes involved in the superhighway operation of respondent the legality of which is in issue in this proceeding.



..... Route employed by respondent in conducting the superhighway operation the legality of which is in issue in this proceeding.

———— Respondent's certificated authority underlying the superhighway operation the legality of which is in issue in this proceeding. (That portion of the underlying certificated operations indicated by "x"s is irregular-route in nature, and the remaining portion of the said underlying certificated operations is regular-route in nature.

"See footnote. 6, supra.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D.C., on the 24th day of January 1975.

No. MC-C-7866

PUGET SOUND TRUCK LINES, INC.—INVESTIGATION AND REVOCATION OF CERTIFICATES

Investigation of the matters and things involved in this proceeding having been made, and said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That respondent, Puget Sound Truck Lines, Inc., of Seattle, Wash., be, and it is hereby, ordered and required to cease and desist forthwith, and thereafter to refrain and abstain from all operations, in interstate or foreign commerce, of the character found in said report to be unlawful, unless and until appropriate authority therefor is obtained; and that respondent is further required to comply with the provisions of rule 99 of the Commission's General Rules of Practice (49 CFR 1100.99).

And it is further ordered, That the statutory effective and compliance date of this order shall be, and it is hereby, fixed as March 27, 1975.

By the Commission, division 1.

ROBERT L. OSWALD,

(SEAL) Secretary.

APPENDIX F

ORDER

INTERSTATE COMMERCE COMMISSION

No. MC-C-7866

PUGET SOUND TRUCK LINES, INC. - INVESTIGATION AND REVOCATION OF CERTIFICATES
(Seattle, Wash.)

PRESENT: George M. Stafford, Chairman, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, and of petition of respondent, filed December 18, 1975, for stay of the effect of the order of the Commission, entered January 24, 1975, as extended by order of November 14, 1975, pending judicial review; and good cause appearing therefor:

It is ordered, That the taking effect of the order entered in the above-entitled proceeding on January 24, 1975, as extended by order of November 14, 1975, be, and it is hereby, stayed pending the further order of the Commission.

Dated at Washington, D. C., this 22nd day of December, 1975.

By the Commission, Chairman Stafford.

ROBERT L. OSWALD,
(SEAL) Secretary.

APPENDIX G

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PUGET SOUND TRUCK LINES, INC., Petitioner,	:	No. 75-3776
-v-	:	OPINION
THE UNITED STATES OF AMERICA and THE INTERSTATE COMMERCE COMMISSION, Respondents.	:	

Petition for Review of an Order
of the Interstate Commerce Commission

Before: LUMBARD,* WRIGHT and ANDERSON, Circuit Judges.

LUMBARD, Circuit Judge:

Puget Sound Truck Lines, Inc. petitions, under 28 U.S.C. § 2342(5), for review of an Interstate Commerce Commission cease and desist order entered on February 11, 1975, which prohibits it from performing certain motor common carrier operations along Interstate Highway I-5 in Washington. Petitioner contends these operations are authorized under the Commission's "superhighway rules," 49 C.F.R. § 1042.3. In its report and order, 120 M.C.C. 892, the Commission held inter alia that petitioner's superhighway operations do not qualify under the superhighway rules because they and petitioner's authorized route deviate from one another by

*Senior Circuit Judge, for the Second Circuit.

more than 25 miles. On this basis we deny the petition.

Puget Sound is a Washington corporation which holds ICC operating authority for the transportation of general commodities between Portland, Oregon and Seattle, Washington, but only by a circuitous route: it holds "regular route" authority running north along Interstate Highway I-5 from Portland to Chehalis, Washington, and thence west to South Bend, Washington; between South Bend and Aberdeen, Washington, to the north, it operates pursuant to "nonradial irregular-route" authority which allows carriage between any two points within twenty miles of South Bend; and it holds regular route authority from Aberdeen east to Olympia, Washington, and thence north along I-5 to Seattle. The Portland-to-Aberdeen authorities were acquired by purchase approved by the Commission in July 1971. See Garrett Freightlines, Inc. v. United States, 353 F. Supp. 1329 (W.D. Wash. 1973) (three-judge court).

In 1972 the ICC detected Puget Sound's trucks travelling all the way between Portland and Seattle via I-5 without using the circuitous Chehalis-South Bend-Aberdeen-Olympia route, and the Commission instituted cease and desist proceedings. The distance from Chehalis to Olympia is 21 miles over I-5 as opposed to 120 miles over Puget Sound's authorized route through South Bend and Aberdeen, and portions of the authorized route are more than 25 miles from I-5.1/

Puget Sound defends its use of I-5 as proper under the ICC's superhighway rules for motor common carriers of property, 49 C.F.R. § 1042.3, which allow carriers to switch from authorized routes to superhighway routes under certain specified circumstances.

> [C]ertificates of public convenience and necessity authorizing the transportation of general commodities [sic] ... over a regular service route or routes ... shall be construed as authorizing operations over superhighways ... [if] the superhighway route ... between the point of departure from and the point of return to the carrier's authorized regular service route or routes, (i) extends in the same general direction as the authorized service route or routes, and (ii) is wholly within 25 airline miles of the carrier's authorized regular service route or routes ....

49 C.F.R. § 1042.3(a)(1). I-5 meets the definition of "superhighway," id. § 1042.3(c).

On March 18, 1974, the administrative law judge ruled for Puget Sound on the ground that the I-5 superhighway route runs between two points on Puget Sound's authorized regular routes, runs in the same general direction, and is never more than 25 miles from those points. The Commission reversed on three independent grounds: first, Puget Sound does not have full regular route authority between Olympia and Chehalis since its authority between Aberdeen and South Bend is only for irregular routes; second, the I-5 superhighway route does not "extend in the same general direction as" Puget Sound's authorized route since portions of the latter run perpendicular to the former; and third, Puget Sound's authorized route between Olympia and Chehalis is not wholly within 25 miles of I-5.2/

We need address only the third rationale. The rules require that the superhighway route be "wholly within 25 airline miles of the carrier's authorized regular service route or routes." Puget Sound says it has met this condition because every point on the new superhighway route is no more than 25 miles from some point on Puget Sound's authorized routes. However, the Commission has consistently interpreted the rule to require also that the authorized route be wholly within 25 miles of the superhighway route. Commercial Motor Freight, Inc., Extension--Crawfordsville, Ind., 114 M.C.C. 500, 519-20 (1971);

Property Motor Carrier Superhighway Rules, 117 M.C.C. 514, 150 n.10 (1972); Associated Truck Lines, Inc. v. Wolverine Express, Inc., 123 M.C.C. 206, 220 (1975). Although Puget Sound's interpretation is the more literal, the Commission's seems fully consistent with the policies underlying the superhighway rules.

The purpose of the superhighway rules is to expedite changeovers from antiquated authorized routes to new superhighways without upsetting the existing competitive balance preserved by ICC regulations. See Motor Service on Interstate Highways--Passengers, 110 M.C.C. 514, 528 (1969). The theory is that a motor carrier's original showing of public convenience and necessity can reasonably be expected to apply to a new route if the differences between the new route and the authorized route are sufficiently slight. The Commission's interpretation of the 25-mile rule ensures that the superhighway route will not be drastically shorter than the authorized route, and it thereby prevents a carrier from taking advantage of the superhighway rules as a way to enter new markets without having to apply to the ICC for a certificate of public convenience and necessity.

Although the effect of the Commission's holding seems likely to be a reduction in competition over the Portland-Seattle route, the Commission's interpretation of its own regulation cannot be judicially overturned unless it is unreasonable or inconsistent with prior holdings. See, e.g., Udall v. Tallman, 380 U.S. 1, 16-17 (1965); Bowles v. Seminole Rock Co., 325 U.S. 410, 413-14 (1945). See generally Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc., 419 U.S. 281, 285-86 (1974). However much we may question the principles underlying government regulation of the trucking industry, see, e.g., W. Jones, Regulated Industries 487-97 (1967), the choice is for Congress, and not the courts, to make.

The petition for review is denied.

Footnotes

1/ According to testimony and photographic evidence presented to the administrative law judge, the circuitous route includes long stretches of very old and narrow roadway which is poorly suited to heavy truck traffic. The route passes through the main streets of four small communities, and lack of shoulders, sharp curves, and occasional heavy fog conditions add to the hazard. The roundabout journey takes roughly two hours longer and requires approximately 25 more gallons of fuel than the same trip along I-5. Nevertheless, Puget Sound says it plans to continue transporting goods from Seattle to Portland even if forced to use the longer route. however, there is no evidence that Puget Sound, or any other trucker, has ever used the longer route for Seattle-Portland operations in the past.

Several other carriers have ICC certificates for the direct I-5 route, and they have successfully opposed Puget Sound's efforts to obtain a certificate of public and necessity from the Commission. See In re Application of: Puget Sound Truck Lines, Inc., For Elimination of Gateway, No. MC-85255 (Sub. N. 49) (Nov. 10, 1975). Of course, our decision here in no way precludes Puget Sound from seeking judicial review of that decision.

2/ The United States has filed a brief in support of the Commission's decision.

Keep on Truckin'

By Bruce Johansen

MOST TRAVELERS who want to go between Olympia and Chehalis, two towns in western Washington, drive 21 miles along Interstate 5.

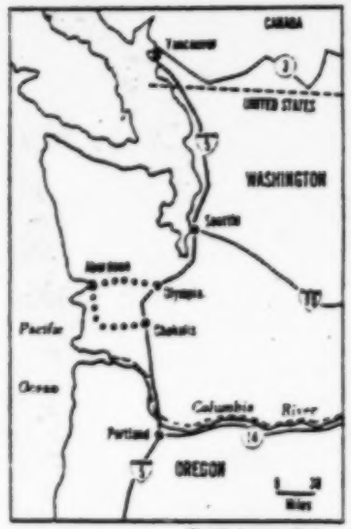
Truck drivers for Puget Sound Truck Lines do, too — but the Interstate Commerce Commission contends they are violating the law.

The ICC, which maintains rules regulating what truckers carry and what routes they follow, has told Puget Sound Truck Lines that its drivers may travel between Olympia and Chehalis only through Aberdeen, another city on Washington's coast.

That is 120 miles — 99 more than the direct route.

The roof of the conflict, presently being fought in the 9th Circuit Court of Appeals, San Francisco, is a 216-word sentence deep in the ICC's ledger of regulations, which total thousands of pages.

The rule, its language as convoluted as the route the ICC says Puget Sound's trucks must follow, permits truckers to leave superhighway routes for as far away as 25 miles.



The Washington Post

Puget Sound's attorneys contend that the 21-mile segment between Olympia and Chehalis meets the requirement, since the trucks do not leave Interstate 5, a superhighway, for more than 25 miles before getting back onto it.

The ICC contends that the designated route for Puget Sound's trucks takes them more than 25 miles from either Olympia or Chehalis. Aberdeen is 47 miles west of Olympia and 73 miles northwest of Chehalis. So, says the ICC, the direct route is illegal.

The route problem originated in the late 1960s, after Puget Sound Truck Lines purchased another company, South Bend Transfer.

Puget Sound had ICC authority to carry goods between Seattle, Olympia and Aberdeen. South Bend had been licensed to haul between Aberdeen, Chehalis and Portland. The company "tacked," or joined, the two routes.

Puget Sound now had a potentially lucrative route between two major markets — Seattle and Portland, Ore. — and it set out to reduce gasoline consumption and to save time and money by using the direct route — 180 miles, entirely along Interstate 5.

Competing truckers, who would have an advantage over Puget Sound if that company had to drive along the wayward route, complained to the ICC. The case went to court — 5 years ago.

For the time being, the ICC is allowing Puget Sound to use the direct route — gas conservation and prevention of pollution and traffic congestion carry some weight — until the case is settled.

Johansen is a reporter for The Seattle Times.

VANCOUVER
NANAIMO
NEW WESTMINSTER
CHILLIWACK
Blaine
Bellingham
ANACORTES
Sedro Woolley
ESQUIMALT
VICTORIA
STRAIT OF JUAN DE FUCA
PORT ANGELES
Port Townsend
Oak Harbor
Everett
LYNWOOD
EDMONDS
MOUNTLAKE TERRACE
KIRKLAND
BELLEVUE
Seattle
BREMERTON
BURIEN
RENTON
KENT
AUBURN
Tacoma
SHELTON
Olympia
PARKLAND
Aberdeen
HOQUIAM
CENTRALIA
Chehalis
South Bend
ASTORIA
KELSO
VANCOUVER
Portland
MILWAUKIE
BEAVERTON
TIGARD
FOREST GROVE
HILLSBORO
CAMAS
Washougal
THE DALLES
MOUNT RAINIER NAT'L PARK
PARK OPEN ALL YEAR FOOD & LODGING
APPENDIX I
I-1
Authorized Route
Superhighway Deviation Route